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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 27 2012

Uniform Issue List: 408.03-00

T.E.P.:R.A.:T1

Legend:

Taxpayer A =

IRA B =

Financial Institution C =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a request for a letter ruling dated May 25, 2011, as supplemented by additional correspondence, dated July 19, 2011, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age [redacted] at the time of the distribution of Amount 2 from IRA B, asserts that his failure to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) was due to his deteriorating mental condition which adversely impacted his ability to manage his financial affairs.

Taxpayer A has submitted a letter, dated July 18, 2011, from his physician stating that Taxpayer A has a well documented history of a progressive memory disorder and that he is currently receiving treatment for such condition.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code, with Financial Institution C. In May of 2010, Taxpayer A requested a distribution of Amount 1 from IRA B, which satisfied Taxpayer A's minimum distribution requirement under section 408(a)(6) of the Code.

Taxpayer A used such distribution to meet a margin call. On November

Taxpayer A took a second distribution of Amount 2 from IRA B for the specific purpose of satisfying his minimum distribution requirement for that year. Due to his memory disorder, as documented by his physician, Taxpayer A failed to recall that he had already taken the required minimum distribution from IRA B for the taxable year in May of . He did not realize he had taken two required minimum distributions from IRA B for the same taxable year until he received a Form 1099-R on January 25, reporting total distributions of Amount 3 (Amount 1 plus Amount 2).

Upon discovery of the earlier distribution of Amount 1, Taxpayer A recontributed Amount 2 into IRA B on January 26, . However, the 60-day rollover period expired on January 17, . Taxpayer A never cashed the check totaling Amount 2. Other than the recontribution of Amount 2 into IRA B, Amount 2 has not been used for any other purpose.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 2 was due to his deteriorating mental condition which impaired his ability to manage his financial affairs.

Therefore, pursuant to section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to Taxpayer A's contribution of Amount 2 into IRA B on January 26, such contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact (I.D. #),
at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437